

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH CHAN, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
TRANSPORTATION, *et al.*,

Defendants.

Case No. 23-cv-10365

Hon. Lewis J. Liman

**BRIEF OF AMICI CURIAE ENVIRONMENTAL DEFENSE FUND, NEW YORK
LEAGUE OF CONSERVATION VOTERS, TRI-STATE TRANSPORTATION
CAMPAIGN, RIDERS ALLIANCE, REAL ESTATE BOARD OF NEW YORK, NEW
YORK LAWYERS FOR THE PUBLIC INTEREST, WE ACT FOR ENVIRONMENTAL
JUSTICE, STREETSPAC, AND TRANSPORTATION ALTERNATIVES IN SUPPORT
OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. Implementing a CBD Tolling Program Would Improve the Quality of Millions of
Lives in the New York/New Jersey/Connecticut Region, Including in
Environmental Justice Communities in Lower Manhattan..... 5

A. The CBD Tolling Program Would Reduce Region-Wide Traffic
Congestion 7

B. A CBD Tolling Program Would Reduce Region-Wide Air Pollution,
Likely Saving Lives and Preventing Hospitalizations 8

C. Significant Transit Investments Funded by a CBD Tolling Program Would
Improve the Quality of Life Region-Wide for Years to Come 10

II. The Project Sponsors Performed Extensive Analyses of the Impacts of Predicted
Traffic Diversion on Both Environmental and Non-Environmental Justice
Communities and Developed Appropriate Mitigation Measures to Address
Potential Adverse Impacts 12

III. Similar CBD Tolling Programs Have Reduced Congestion and Improved Public
Health in Cities Around the World 16

CONCLUSION..... 19

TABLE OF AUTHORITIES**Page(s)****Other Authorities**

| | |
|--|---------|
| <i>Air Pollution and the Health of New Yorkers: The Impact of Fine Particles and Ozone</i> , NYC Health, https://www.nyc.gov/assets/doh/downloads/pdf/eode/eode-air-quality-impact.pdf (last visited Mar. 22, 2024)..... | 9 n.23 |
| Andrew Curry, <i>Rome Reborn Archaeologists unveil a 3-D model of the great city circa A.D. 400</i> , Smithsonian Magazine (June 30, 2007), https://www.smithsonianmag.com/history/rome-reborn-157825055/#:~:text=The%20urban%20center%20of%20the,understand%20how%20the%20city%20functioned. (last visited Mar. 22, 2024) | 6 n.9 |
| <i>Climate and the MTA</i> , https://new.mta.info/climate (last visited Mar. 29, 2024) | 12 n.35 |
| <i>Congestion Charge</i> , Transport For London, https://tfl.gov.uk/modes/driving/congestion-charge#:~:text=The%20Congestion%20Charge%20is%20a,by%20setting%20up%20Auto%20Pay. (last visited Mar. 22, 2024) | 17 n.59 |
| <i>Dallas</i> , Data Commons, https://datacommons.org/place/geoId/4819000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Mar. 22, 2024) | 6 n.7 |
| <i>Downtown Congestion Pricing Study Case Study: London</i> , San Francisco County Transportation Authority (Feb. 2020), https://www.sfcta.org/sites/default/files/2020-02/Congestion-Pricing-Case-Studies_2020-02-13.pdf (last visited Mar. 22, 2024) | 17 n.60 |
| EPA, <i>Fast Facts on Transportation Greenhouse Gas Emissions</i> , https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions (last visited Mar. 22, 2024) | 12 n.33 |
| <i>Formaldehyde</i> , National Cancer Institute, https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/formaldehyde#:~:text=Which%20cancers%20are%20associated%20with,%2C%20nasal%20cavity%2C%20and%20nasopharynx (last visited Mar. 22, 2024) | 10 n.26 |

| | |
|--|------------------|
| <i>Greenhouse Gas Emissions</i> , OECD.Stat, https://stats.oecd.org/Index.aspx?DataSetCode=air_ghg (last visited Mar. 22, 2024) | 12 n.37 |
| <i>Houston</i> , Data Commons, https://datacommons.org/place/geoId/4835000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Mar. 22, 2024) | 6 n.6 |
| <i>Inhalable Particulate Matter and Health (PM2.5 and PM10)</i> , California Air Resources Board, https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health (last visited Mar. 22, 2024)..... | 9 n.22 |
| Jeffrey M. Zupan et al., <i>An Exploration of Motor Vehicle Congestion Pricing in New York</i> , Regional Plan Association (Nov. 2003), https://s3.us-east-1.amazonaws.com/rpa-org/pdfs/RPA-An-Exploration-of-Congestion-Pricing-in-New-York.pdf p. 18 (last visited Mar. 22, 2024) | 6 n.8 |
| Joe Peach, <i>5 Cities with Congestion Pricing</i> , Smartcities Dive, https://www.smartcitiesdive.com/ex/sustainablecitiescollective/five-cities-congestion-pricing/28437/ (last visited Mar. 22, 2024)..... | 16 n.57 |
| <i>Los Angeles</i> , Data Commons, https://datacommons.org/place/geoId/0644000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Mar. 22, 2024) | 6 n.5 |
| <i>MTA Capital Program 2020-2024 Rebuilding New York's Transportation System</i> , MTA Capital Program October 2019 at p. 19 https://new.mta.info/document/10511 (last visited Mar. 22, 2024) | 11 n.29 |
| Patrick Ercolano, <i>Study: Stockholm traffic tax helps kids in Sweden breathe easier Decreases in air pollution lead to dramatic drop in asthma attacks among young children</i> , John Hopkins University (Mar. 2, 2017), https://hub.jhu.edu/2017/03/02/health-effects-for-children-sweden-traffic-tax/ (last visited Mar. 22, 2024) | 18 n.61, 18 n.62 |
| Press Release, <i>DiNapoli: Shift in MTA's Paratransit Program Generates Cost Savings</i> , Nov. 20, 2023, https://www.osc.ny.gov/press/releases/2023/11/dinapoli-shift-mtas-paratransit-program-generates-cost-savings (last visited Mar. 22, 2024) | 11 n.32 |

| | |
|---|---------------|
| Press Release, <i>DiNapoli: Shift in MTA's Paratransit Program Generates Cost Savings</i> , Nov. 20, 2023, https://www.osc.ny.gov/press/releases/2023/11/dinapoli-shift-mtas-paratransit-program-generates-cost-savings (last visited Mar. 22, 2024) | 11 n.32 |
| <i>Public Health Statement for Benzene</i> , Agency for Toxic Substances and Disease Registry, https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=37&toxid=14#:~:text=Exposure%20to%20benzene%20has%20been,carcinogen%20(can%20cause%20cancer (last visited Mar. 22, 2024) | 10 n.25 |
| Statement of Jamie Torres-Springer, MTA President of Construction and Development, at the December 6, 2023 MTA Board Meeting, https://new.mta.info/transparency/board-and-committee-meetings/november-2023 (last visited Mar. 22, 2024) | 11 n.30 |
| <i>Station accessibility projects</i> , MTA (updated Dec. 6, 2023), https://new.mta.info/project/station-accessibility-upgrades (last visited Mar. 22, 2024) | 11 n.31 |
| <i>Toxic Substances Portal</i> , Agency for Toxic Substances and Disease Registry, https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=458&toxid=81#:~:text=and%20blood%20change%20lymphatic%20system (last visited Mar. 22, 2024) | 10 n.24 |
| <i>Transit Avoided Carbon</i> , MTA (updated Nov. 21, 2019), https://new.mta.info/sustainability/transit-avoided-carbon (last visited Mar. 22, 2024) | 12 n.35 |
| <i>Two decades in, what can other cities learn from the London congestion charge?</i> , ARUP, https://www.arup.com/perspectives/two-decades-in-what-can-other-cities-learn-from-the-london-congestion-charge (last visited Mar. 22, 2024) | 17 n.58 |
| U.S. Department of Transportation, <i>Federal Highway Administration Central Business District (CBD) Tolling Program Final Environmental Assessment</i> (“EA”), April 2023, https://new.mta.info/project/CBDTP/environmental-assessment (last visited Mar. 22, 2024) | <i>passim</i> |
| U.S. Energy Information Administration, <i>Environment</i> , https://www.eia.gov/environment/emissions/state/ (last visited Mar. 22, 2024) | 12 n.34 |
| United States Department of Transportation Order 5610.2C | 13 n.43 |

INTEREST OF *AMICI CURIAE*

Amici curiae Environmental Defense Fund (“EDF”), New York League of Conservation Voters (“NYLCV”), Tri-State Transportation Campaign (“TSTC”), Riders Alliance, Real Estate Board of New York (“REBNY”), New York Lawyers for the Public Interest (“NYLPI”), WE ACT for Environmental Justice (“WE ACT”), StreetsPAC, and Transportation Alternatives (“TA”) (collectively, “*amici*”) are nine organizations committed to protecting the safety and well-being of residents in and around New York City, particularly by way of environmental advocacy.¹

EDF is a nonprofit organization headquartered in New York City that links science, economics, and the law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. EDF is one of the world’s largest environmental organizations, with hundreds of thousands of members across the United States and a staff of over 1,000 scientists, policy experts, lawyers and other professionals from around the world. Protecting public health and the environment from toxic air pollution and stabilizing the climate are core EDF missions. EDF regularly participates in regulatory and judicial proceedings at the federal and state levels, and has worked for decades to protect human health and the environment for people and communities in New York City.

NYLCV is a non-partisan, statewide environmental organization in New York that fights for clean water, healthy air, renewable energy, and open space. For thirty years, NYLCV has worked to lobby state and local governments on environmental policy, provide objective information to the public, and hold elected officials accountable.

¹ *Amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

TSTC is a non-profit organization dedicated to promoting sustainable transportation, equitable planning policies and practices, and strong communities in the New York City metro area. TSTC uses data and policy analysis, along with strategic media outreach, to influence decision-making throughout the metropolitan region. Since it was founded in 1993, TSTC has become a leading voice in the region for transportation and land use policy reform.

Riders Alliance is New York's grassroots organization of bus and subway riders from across New York City with a shared vision: a public transit system that works for every New Yorker, in every community. Riders Alliance fights for reliable, affordable, accessible public transit in order to build a more just and sustainable New York. Riders Alliance holds elected officials accountable and takes direct action to guarantee that riders have a powerful voice in the decisions that affect transit and the future of New York.

REBNY is New York City's leading real estate trade association. Founded in 1896, REBNY has more than 14,000 members with extensive experience in the City's real estate development industry, including commercial, residential and institutional property owners, builders, managers, investors, and others. REBNY regularly publishes market data, policy reports, and broker surveys, and it provides members with various resources, including educational courses and charitable service opportunities and a wide range of other member benefits. REBNY works to promote sound public and industry policies to expand and improve New York's economy.

For nearly 50 years, NYLPI has been a leading civil rights and legal services advocate for New Yorkers marginalized by race, poverty, disability, and immigration status. Through NYLPI's community lawyering model, it bridges the gap between traditional civil legal services and civil rights, building strength and capacity for both individual solutions and long-

term impact. NYLPI's work integrates the power of individual representation, impact litigation, organizing, and policy campaigns. Guided by the priorities of its communities, NYLPI strives to secure environmental justice for low-income communities of color, achieve equality of opportunity and self-determination for people with disabilities, create equal access to health care, ensure immigrant opportunity, and strengthen local nonprofits.

Founded in 1988, WE ACT is a community-based organization in Harlem, New York City. At the city, state, and federal levels, WE ACT fights environmental racism—racial discrimination in environmental policy-making, enforcement of regulations and laws, and targeting communities of color for toxic waste disposal and siting of polluting industries. WE ACT advocates for community-driven solutions that can remedy the institutionalized harms associated with unjust urban planning policies that have plagued communities of color for generations.

StreetsPAC is a New York City-based political action committee dedicated to electing candidates who support pro-safe streets and pro-public transit policies, and to advancing such policies through related advocacy work.

TA is a leader in the movement for safe, equitable streets in New York City. TA uses a combination of neighborhood-level grassroots organizing and citywide advocacy to push for changes in public policy, street design, enforcement, and resource allocation that transform New York City's streets for the better.

To achieve their respective missions, *amici* participate in filing *amicus curiae* briefs in cases, like this one, that raise issues of significant concern to the populace in the New York/New Jersey/Connecticut area. As relevant here, *amici* have a strong interest in ensuring that The Manhattan Central Business District ("CBD") Tolling Program (the "CBD Tolling

Program”) already approved by the United States Department of Transportation and Federal Highway Administration goes into effect, thereby realizing the significant quality of life, public health and environmental benefits it was designed to achieve for *amici*’s constituents in the New York/New Jersey/Connecticut area.

SUMMARY OF ARGUMENT

Amici submit this brief to support a program that can finally begin to effectively address the intractable problems of regional traffic congestion and related poor air quality. Residents of the region deserve to receive, as soon as possible, the environmental, health, transportation, equity and accessibility, environmental justice, and positive economic and financial benefits of establishing a large-scale congestion pricing program. At a time when the imminent dangers and adverse impacts of climate change have become all too apparent, the implementation of such a program is needed now more than ever. This Court should allow the Finding of No Significant Impact for the CBD Tolling Program made by the United States Department of Transportation and Federal Highway Administration (“FHWA”) to stand so that the process to approve the CBD Tolling Program may proceed expeditiously. *Amici* respectfully submit that the Court should do so for the following three reasons.

First, implementing the CBD Tolling Program would improve the quality of life for millions of people in the New York/New Jersey/Connecticut region including, contrary to the Plaintiff’s position in this litigation, residents of Battery Park City (“BPC”) and Lower Manhattan. The program is forecasted to reduce region-wide traffic congestion both within the Manhattan CBD itself and in surrounding areas. The program would also reduce region-wide air pollution, likely saving lives and preventing hospitalizations. Indeed, the CBD Tolling Program is expected to reduce particulate pollution and ozone precursors, in addition to emissions of toxic air pollutants from mobile sources, throughout the New York/New Jersey/Connecticut region

with the largest reductions occurring in the Manhattan CBD. Moreover, significant transit investments funded by the CBD Tolling Program would provide a steady source of funding for the Metropolitan Transportation Authority (“MTA”) and the transit services it operates for all riders, including BPC and Lower Manhattan commuters using MTA subways and buses. These benefits would improve the quality of lives in the entire region for years to come.

Second, after an extensive outreach and analysis of the potential impacts from traffic diversion of a CBD Tolling Program on both environmental justice and non-environmental justice communities, including in BPC and Lower Manhattan, the MTA has committed to mitigation of adverse impacts to environmental justice communities affected by predicted traffic increases, such as setting toll rates and encouraging overnight delivery in the Manhattan CBD.

Third, the examples of successful implementation of similar congestion pricing programs in other cities and their surrounding areas across the world provide compelling support for the proposed Manhattan CBD tolling program.

ARGUMENT

I. Implementing a CBD Tolling Program Would Improve the Quality of Millions of Lives in the New York/New Jersey/Connecticut Region, Including in Environmental Justice Communities in Lower Manhattan

With over 22 million residents and 10.7 million jobs, the Manhattan CBD and the surrounding 28 counties comprise the “largest and most economically significant metropolitan region in the United States.”² The Manhattan CBD is the economic, cultural and transportation hub of this dynamic area. Manhattan is connected to the rest of the region by twenty vehicular

² U.S. Department of Transportation, Federal Highway Administration, Central Business District (CBD) Tolling Program Final Environmental Assessment (“EA”), April 2023 p. ES-2, <https://new.mta.info/project/CBDTP/environmental-assessment>

bridges and tunnels, the nation's three largest commuter railroads, the largest subway system, and two of the five largest bus transit systems in the United States.³ As of 2019, an average of 7.7 million people entered and left the Manhattan CBD daily.⁴ This total is roughly equivalent to the combined populations of the cities of Los Angeles,⁵ Houston,⁶ and Dallas,⁷ commuting daily into and out of an area of about 8.5 square miles,⁸ slightly larger than half the size of the ancient city of Rome.⁹

Despite the fact that 75% of those entering the CBD everyday use mass transit of one kind or another,¹⁰ New York City was the most congested of any urban area in the United States in 2020 and 2021.¹¹ This congestion delays emergency vehicles, erodes worker productivity and raises the cost of deliveries and the overall cost of doing business through increased commuting and travel times for vehicles using the roadways. This congestion and related vehicle use in the area have resulted in unhealthy air quality for millions of residents. Air quality in 25 of the 28 counties in the EA study area with a total population of over 21.4 million did not achieve the health-based 2008 National Ambient Air Quality Standards ("NAAQS") for

³ See *id.*

⁴ See EA Figure ES-2 at p. ES-3.

⁵ See *Los Angeles*, Data Commons, https://datacommons.org/place/geoId/0644000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Mar. 22, 2024).

⁶ See *Houston*, Data Commons, https://datacommons.org/place/geoId/4835000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Mar. 22, 2024).

⁷ See *Dallas*, Data Commons, https://datacommons.org/place/geoId/4819000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Mar. 22, 2024).

⁸ See Jeffrey M. Zupan et al., *An Exploration of Motor Vehicle Congestion Pricing in New York*, Regional Plan Association (Nov. 2003), <https://s3.us-east-1.amazonaws.com/rpa-org/pdfs/RPA-An-Exploration-of-Congestion-Pricing-in-New-York.pdf> p. 18 (last visited Mar. 22, 2024).

⁹ See Andrew Curry, *Rome Reborn Archaeologists unveil a 3-D model of the great city circa A.D. 400*, Smithsonian Magazine (June 30, 2007), <https://www.smithsonianmag.com/history/rome-reborn-157825055/#:~:text=The%20urban%20center%20of%20the,understand%20how%20the%20city%20functioned.> (last visited Mar. 22, 2024).

¹⁰ See EA Figure ES-2 at p. E-3.

¹¹ See EA Figure ES-3 at p. ES-5.

ozone or the stricter 2015 NAAQS for ozone. Furthermore, Manhattan did not meet the NAAQS for particulates 10 microns in diameter or smaller (PM₁₀).¹² Automobiles and trucks are the major contributors to these high ambient ozone levels. One of the most effective methods for reducing toxic emissions from mobile sources would be lowering the total vehicle miles traveled (“VMT”) in the New York/New Jersey/Connecticut metropolitan area.

A. The CBD Tolling Program Would Reduce Region-Wide Traffic Congestion

Without an effective traffic management program, congestion in the Manhattan CBD and region-wide will only increase. Absent a CBD Tolling Program, project sponsors project that VMT will grow region-wide by 8.8% between 2023 and 2045. The Manhattan CBD is forecast to experience VMT growth of 4.9% during that period.¹³ Action is urgently needed to control and reduce congestion region-wide.

All of the CBD Tolling Program scenarios modeled in the EA would not only slow the growth in VMT but would also reduce VMT region-wide.¹⁴ Starting in 2023 and compared to the projected baseline without a CBD Tolling Program in 2045, the CBD Tolling Program scenarios analyzed in the EA would reduce VMT in the Manhattan CBD from 6 to 9%.¹⁵ Such significant reductions could materially impact congestion within the Manhattan CBD resulting in reduced traffic wait times, increased productivity and shortened emergency vehicle response times.

Each of the CBD Tolling Program scenarios analyzed in the EA would reduce all daily vehicle entries into the Manhattan CBD by 15.4 %-19.9%¹⁶ compared to the 2023 no-

¹² See EA Table 10-2 at p.10-4. The annual NAAQS for PM₁₀ was revoked on October 17, 2006.

¹³ See EA Table 4A-2 at p. 4A-10.

¹⁴ See EA Table 4A-7 at p. 4A-15.

¹⁵ See EA Table 4A-7 and 4A-14 at pp. 4A-15 & 4A-21, respectively.

¹⁶ See EA Table 4A-5 at p. 4A-12.

action scenario. Similar reductions are forecast when compared to the 2045 baseline without a CBD Tolling Program.¹⁷ Significantly, the CBD Tolling Program scenarios would reduce daily truck trips *through* the Manhattan CBD compared to the status quo at levels ranging from a low of 21% under Scenario G to a high of 81% under Scenario F.¹⁸ This would not only reduce the emissions of diesel exhaust within the Manhattan CBD but would also reduce the risk of auto accidents.

B. A CBD Tolling Program Would Reduce Region-Wide Air Pollution, Likely Saving Lives and Preventing Hospitalizations

A region-wide reduction in VMT would result in a concomitant reduction in air pollutants region-wide in both 2023 and 2045.¹⁹ The largest reductions would be achieved in the Manhattan CBD and the rest of Manhattan.

The reductions in PM₁₀ and PM_{2.5} emissions in the Manhattan CBD and the rest of Manhattan would significantly improve public health in the region. The EA estimates that the CBD Tolling program Scenario A would reduce annual PM₁₀ emissions by 12.16% in the Manhattan CBD and 9.75% in the rest of Manhattan, compared to the 2023 no-action scenario.²⁰ In 2045, it would reduce annual PM and 11.55% in the Manhattan CBD and 10.24% in the rest of Manhattan.²¹ Particulate matter pollution—both PM₁₀ and PM_{2.5}—poses a severe threat to public health, especially for vulnerable populations. According to the California Air Resources Board:

For PM_{2.5}, short-term exposures (up to 24-hours duration) have been associated with premature mortality, increased hospital admissions for heart or lung causes, acute and chronic bronchitis, asthma attacks, emergency room visits, respiratory symptoms, and

¹⁷ See EA Table 4A-12 at p. 4A-19.

¹⁸ See EA Table 16-1 at p. 16-3.

¹⁹ See EA Table 10-7 at p. 10-22.

²⁰ See EA Table 10-8 at p. 10-23.

²¹ See EA Table 10-9 at p. 10-24.

restricted activity days. These adverse health effects have been reported primarily in infants, children, and older adults with preexisting heart or lung diseases. In addition, of all of the common air pollutants, PM_{2.5} is associated with the greatest proportion of adverse health effects related to air pollution, both in the United States and world-wide based on the World Health Organization's Global Burden of Disease Project.

Short-term exposures to PM₁₀ have been associated primarily with worsening of respiratory diseases, including asthma and chronic obstructive pulmonary disease (COPD), leading to hospitalization and emergency department visits.

Long-term (months to years) exposure to PM_{2.5} has been linked to premature death, particularly in people who have chronic heart or lung diseases, and reduced lung function growth in children. The effects of long-term exposure to PM₁₀ are less clear, although several studies suggest a link between long-term PM₁₀ exposure and respiratory mortality. The International Agency for Research on Cancer (IARC) published a review in 2015 that concluded that particulate matter in outdoor air pollution causes lung cancer.²²

Air pollution poses a major environmental threat to the health of New York City residents. The New York City Health Department estimates that each year, PM_{2.5} pollution causes more than 3,000 deaths, 2,000 hospital admissions for lung and heart conditions, and approximately 6,000 emergency room visits for asthma in children and adults citywide. The Department also estimates that citywide, “a modest reduction of 10% in current PM_{2.5} levels could prevent more than 300 premature deaths, 200 hospital admissions and 600 emergency department visits *annually*”²³ (emphasis added)

While the impacts of particulate pollution vary considerably across the city and are significantly correlated with neighborhood income level, short and long-term reductions of particulate emissions of the magnitudes expected from a Manhattan CBD tolling plan would

²² *Inhalable Particulate Matter and Health (PM_{2.5} and PM₁₀)*, California Air Resources Board, <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health> (last visited Mar. 22, 2024).

²³ *Air Pollution and the Health of New Yorkers: The Impact of Fine Particles and Ozone*, NYC Health, <https://www.nyc.gov/assets/doh/downloads/pdf/eode/eode-air-quality-impact.pdf> (last visited Mar. 22, 2024).

greatly improve the quality of life for millions of people. Such reductions are also likely to prolong lives that might otherwise have been cut short by exposure to higher particulate levels, keeping some children out of hospitals, and helping protect others with heart and lung conditions.

In addition to reducing particulate matter pollution and ozone precursors, a CBD Tolling Program would also reduce emissions of toxic air pollutants from mobile sources, including the known human carcinogens 1,3-butadiene,²⁴ benzene,²⁵ and formaldehyde,²⁶ among others.²⁷

C. Significant Transit Investments Funded by a CBD Tolling Program Would Improve the Quality of Life Region-Wide for Years to Come

Improved air quality and related improvements in health and well-being for millions of people are benefits from a CBD Tolling Program that would accrue not only to residents of the New York, but also to New Jersey and Connecticut residents. In addition, a CBD Tolling Program would provide a steady source of funding for the MTA and the transit services it operates. These services are the life blood of the region, moving millions of residents from home to work and other activities every day.

Project sponsors estimate that a CBD tolling program would raise sufficient net revenue annually to fund \$15 billion of the MTA's \$52.0 billion 2020-2024 Capital Program

²⁴ See *Toxic Substances Portal*, Agency for Toxic Substances and Disease Registry, <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=458&toxid=81#:~:text=and%20blood%20change%20lymphatic%20system> (last visited Mar. 22, 2024).

²⁵ Exposure to benzene has been associated with development of a particular type of leukemia called acute myeloid leukemia (AML). See *Public Health Statement for Benzene*, Agency for Toxic Substances and Disease Registry, [https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=37&toxid=14#:~:text=Exposure%20to%20benzene%20has%20been,carcinogen%20\(can%20cause%20cancer\)](https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=37&toxid=14#:~:text=Exposure%20to%20benzene%20has%20been,carcinogen%20(can%20cause%20cancer)) (last visited Mar. 22, 2024).

²⁶ See *Formaldehyde*, National Cancer Institute, <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/formaldehyde#:~:text=Which%20cancers%20are%20associated%20with,%2C%20nasal%20cavity%2C%20and%20nasopharynx> (last visited Mar. 22, 2024).

²⁷ See EA Table 10-12 at p. 10-38.

(“Capital Program”).²⁸ These fees would be the Capital Program’s single largest source of revenue and would fund 30% of the 2020 – 2024 Capital Program.²⁹ They would also fund 50% of the remaining Capital Program investments.³⁰ These much needed MTA capital investments would include improvements to MTA services, such as new subway cars, installation of modern signaling equipment and upgrading of communications equipment.

These MTA investments would also improve access to the system for tens of thousands of riders. The improvements would include the installation of new elevators for accessibility at 70 stations in all boroughs, along with wider fare gates at all ADA stations and replacement of escalators and elevators. A total of \$5.2 billion of the MTA Capital Program has been allocated exclusively to accessibility improvements.³¹ A more accessible subway system would encourage more people to use transit, resulting in fewer vehicle trips. These could include trips by up to 30,000 New Yorkers with disabilities currently reliant on the Access-A-Ride paratransit system due to the inaccessibility of the subway system.³²

The foregoing MTA improvements would benefit not only New Yorkers. All commuters entering the CBD would reap the productivity benefits of reduced congestion along with the health and welfare benefits of reduced air pollution in the Manhattan CBD and the rest of Manhattan from the implementation of a CBD Tolling Program.

²⁸ See EA at ES-7.

²⁹ See *MTA Capital Program 2020-2024| Rebuilding New York’s Transportation System*, MTA Capital Program October 2019 at p. 19, <https://new.mta.info/document/10511> (last visited Mar. 22, 2024).

³⁰ See Statement of Jamie Torres-Springer, MTA President of Construction and Development, at the December 6, 2023 MTA Board Meeting, <https://new.mta.info/transparency/board-and-committee-meetings/november-2023> (last visited Mar. 22, 2024).

³¹ See *Station accessibility projects*, MTA (updated Dec. 6, 2023), <https://new.mta.info/project/station-accessibility-upgrades> (last visited Mar. 22, 2024).

³² While many Access-A-Ride users are unable to use the subway due to the severity of their disabilities, a significant portion – over 30,000 – could use the system, instead of paratransit, if it were made accessible. See Press Release, *DiNapoli: Shift in MTA’s Paratransit Program Generates Cost Savings*, Nov. 20, 2023, <https://www.osc.ny.gov/press/releases/2023/11/dinapoli-shift-mtas-paratransit-program-generates-cost-savings> (last visited Mar. 22, 2024).

A fully funded and well-functioning MTA would result in significant reductions in greenhouse gas emissions compared to a scenario without effective transit. Transportation is a major source of greenhouse gases nationally (29% of emissions)³³ and of carbon dioxide, the most numerous greenhouse gas, in New York State (43.1%).³⁴ Even so, the per capita transportation emissions in New York City are some of the lowest in the nation at 1.9 metric tons, one third of the national average.³⁵ This is because of the high levels of transit use in the region. The MTA estimates that every year its operations result in a net 17 million metric tons of annual greenhouse gas emissions avoided,³⁶ an amount that is comparable to the total annual greenhouse gas emissions of the country of Slovenia.³⁷ Without guaranteed funding, the MTA cannot effectively continue to provide the avoided greenhouse gas emissions benefits that are enjoyed by everyone in the region.

II. The Project Sponsors Performed Extensive Analyses of the Impacts of Predicted Traffic Diversion on Both Environmental and Non-Environmental Justice Communities and Developed Appropriate Mitigation Measures to Address Potential Adverse Impacts

Although the significant overall benefits of a CBD Tolling Program will be experienced region-wide, some areas could experience slight increases in diverted traffic with resulting air emissions. The project sponsors developed an extensive public and environmental justice engagement process in the fall and winter of 2021 that included 19 separate webinars with

³³ See EPA, *Fast Facts on Transportation Greenhouse Gas Emissions*, <https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions> (last visited Mar. 22, 2024).

³⁴ See U.S. Energy Information Administration, *Environment*, <https://www.eia.gov/environment/emissions/state/> (last visited Mar. 22, 2024).

³⁵ See *Climate and the MTA*, <https://new.mta.info/climate> (last visited Mar. 29, 2024); see also *Transit Avoided Carbon*, MTA (updated Nov. 21, 2019), <https://new.mta.info/sustainability/transit-avoided-carbon> (last visited Mar. 22, 2024).

³⁶ See CBC 2021 Report at pp. 3-4.

³⁷ See *Greenhouse Gas Emissions*, OECD.Stat, https://stats.oecd.org/Index.aspx?DataSetCode=air_ghg (last visited Mar. 22, 2024).

over 1,000 participants.³⁸ Of the 19 total webinars, 9 were targeted at environmental justice.³⁹ The webinars were focused on geographic areas, although anyone—including residents of BPC and Lower Manhattan—was allowed to participate.⁴⁰ The project sponsors also consulted with an Environmental Justice Stakeholder Working Group and an Environmental Justice Technical Advisory Group.⁴¹

Participants in the webinars and in the environmental justice advisory groups identified several issues of concern, including potential traffic, air quality and noise impacts near environmental justice communities due to the diversion of traffic from or within the Manhattan CBD, among other issues.⁴²

To determine if the CBD Tolling Programs could have disproportionate adverse impacts on these communities, the project sponsors performed a more in-depth environmental justice analysis. Following guidance developed by the federal government for the performance of environmental justice analyses,⁴³ the project sponsors assessed both regional-scale effects on environmental justice communities in the 28-county study area and more local effects in neighborhoods in a 10-county study area that would be most impacted by any CBD Tolling Program scenario.⁴⁴ The analysis developed an extensive racial and economic profile of the 10 counties in the local study area. Members of many of the environmental justice communities in the 10-county study area are already exposed to disproportionately high levels of air pollutants having pre-existing pollutant indicators at or above the 80th percentile of the national average. In

³⁸ See EA Table 18-2 at p. 18-6.

³⁹ See *id.*

⁴⁰ See EA at p. 18-5.

⁴¹ See EA at p. 18-7.

⁴² See EA at p. 17-4.

⁴³ *Guidance on Environmental Justice and NEPA*, Federal Highway Administration (“FHWA”) 2011, United States Department of Transportation Order 5610.2C, and FHWA Order 6640.23A. See EA p. 17-2.

⁴⁴ See EA Figures 17-3 – 17-14 at pp. 17-12-17-71, respectively.

addition, many residents of these communities also experience chronic disease at greater rates than average, with chronic disease indicators at or above the 66.66th percentile of the national average. Many of these communities experience both disproportionately high levels of air pollution and chronic disease.⁴⁵

The environmental justice communities identified within the Manhattan CBD using the federal guidance are located on the Lower East Side, isolated areas of the Hudson Yards neighborhood and in the Midtown South and Clinton neighborhoods. None were identified in the BPC-Lower Manhattan neighborhood.⁴⁶

The project sponsors also performed an assessment of the impacts of the CBD Tolling scenarios on traffic at 102 individual intersections, including multiple intersections along West Street next to BPC and the entrances and exits of the Hugh L. Carey tunnel in the Lower Manhattan.⁴⁷ These assessments found potentially adverse effects from traffic diversion at only the intersection of Trinity Place and Edgar Street in Lower Manhattan. The project sponsors stated that New York City Department of Transportation will monitor this intersection and address any adverse effects with signal timing adjustments per NYCDOT's normal practice.⁴⁸

In addition, project sponsors performed an extensive assessment of the potential impact to both environmental justice and non-environmental justice communities from the diversion of all traffic with a special focus on the diversion of trucks as a result of the CBD Tolling program. Truck diesel exhaust is a significant source of not only particulate matter but also mobile source air toxics. The significant deleterious health impacts of these pollutants are discussed in Section I.B. above and the sponsors further elaborate on these effects in EA

⁴⁵ See EA Figures 17-10 and 17-11 at pp. 17-38 – 39.

⁴⁶ See EA at Figure 17-2 at p. 17-11.

⁴⁷ See EA at Figure 4B-15 for the location of the intersections assessed at p. 4B-105.

⁴⁸ See EA at Table 4B-32 at p. 4B-111.

Appendix 17D.⁴⁹ To identify adverse effects on potentially vulnerable communities, the sponsors analyzed the type of roadways and the proximity of individuals to roadways. Project sponsors highlighted EPA findings that exposure to roadway pollutants was highest on or near roadways and reduced as the distance between the roadways and individuals increased.⁵⁰ While the sponsor found potential increases in traffic impacts in the Lower East Side at the FDR they did not find any in the BPC area or Lower Manhattan.⁵¹ The study projected increases in diverted truck traffic in areas of New Jersey, the Bronx and Northern Manhattan but it did not find increased diverted truck traffic in Lower Manhattan and it found significant expected decreases in truck traffic in Midtown Manhattan.⁵²

The project sponsors identified potential adverse impacts to environmental justice populations region-wide, including “potential adverse effect to environmental justice populations as a result of traffic diversions in communities already potentially vulnerable due to pre-existing air pollution and chronic disease.”⁵³

The project sponsors proposed a set of mitigation measures designed to address these potential adverse impacts and other potential adverse impacts that might be identified during further program design and implementation.⁵⁴ Some of these mitigation measures are regional in scope but would address potential adverse impact to specific environmental justice communities. For example, the MTA has committed to setting overnight truck tolls on the seven crossings that it controls into Manhattan at levels that would encourage truck traffic to access the

⁴⁹ See EA Appendix 17D Section 2.2 at pp. Appendix 17D-7 – 8.

⁵⁰ See EA Appendix 17D Section 4 and 5 at pp. Appendix 17D-7-8.

⁵¹ See EA Table 17D-12 at p. Appendix 17D-57.

⁵² See EA Table 17D-10 at pp. Appendix 17D-52 – 54.

⁵³ See EA Table 17-15 at p. 17-61.

⁵⁴ See EA Table 17-16 at p. 17-65.

Manhattan CBD during the overnight hours, reducing expected truck trips on the 1-95 corridor in Bergen County in order to avoid the Manhattan CBD.⁵⁵

There are other mitigation measures that will be implemented along with a CBD Tolling Program. The MTA has committed to an adaptive management approach that will include monitoring the efficacy of the mitigation methods, continuing consultations with affected stakeholders, and committing to adjust the CBD Tolling Program as needed.

The MTA has committed to a total mitigation package of \$207.5 million. In addition to the reduction in overnight tolls described above, mitigation measures will include subsidies for low income drivers; paying local fleet operators to reduce truck emissions under the NYC Clean Truck Program; constructing electric truck charging infrastructure; installing roadside vegetation to improve near-road air quality; renovating parks and green spaces in environmental justice communities; and installing air filtration units in schools located near highways.⁵⁶

III. Similar CBD Tolling Programs Have Reduced Congestion and Improved Public Health in Cities Around the World

Five cities have introduced congestion pricing programs similar to the Manhattan CBD Tolling Program.⁵⁷ The first was in Singapore in 1975 and that program continues. Introduced in 2003, the London Congestion Charging Scheme (LCCS) initially required nonexempt drivers to pay £5 to enter an 8-mile square area of central London bounded by the London inner ring road between 7:30 a.m. and 6:30 p.m. from Monday to Friday. Like the

⁵⁵ *See id.*

⁵⁶ *See* EA Table 17-16, at p. 17-65.

⁵⁷ *See* Joe Peach, *5 Cities with Congestion Pricing*, Smartcities Dive, <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/five-cities-congestion-pricing/28437/> (last visited Mar. 22, 2024).

proposed CBD Tolling Program, the overall plan included major investments in transit.⁵⁸ Since then, the charge has risen to £15 (\$18.50), and the effective times have been changed from 7:00 a.m. to 6:00 p.m. weekdays and noon to 6:00 p.m. on Saturdays, Sundays and bank holidays, except Christmas Day and New Year's Day.⁵⁹

The LCCS has been an impressive success. As of 2020, congestion was reduced in central London by 30% and greenhouse gas emissions by 12% and transit ridership increased by 38%. Between 2002 and 2014, car traffic entering central London fell by 39%. Furthermore, London has continued to monitor impacts from the LCCS and has adapted the program accordingly.⁶⁰

The LCCS offers a useful model for a CBD Tolling Program. Both programs would cover areas of similar size with access points that allow for relatively easy tolling. Both areas of the respective cities covered or to be covered by the congestion pricing program (i) are financial and transport hubs of their respective cities; (ii) had or have extensive traffic congestion and related air pollution issues; and (iii) are served by transit and have high rates of transit usage that could rise even higher. In addition, both cities require significant investment to maintain transit infrastructure and service levels. That London has managed to reduce congestion and related air emissions using the LCCS indicates that the CBD Tolling Program, if structured correctly, could similarly reduce congestion and emissions in the center of the New York metropolitan area.

⁵⁸ See *Two decades in, what can other cities learn from the London congestion charge?*, ARUP, <https://www.arup.com/perspectives/two-decades-in-what-can-other-cities-learn-from-the-london-congestion-charge> (last visited Mar. 22, 2024).

⁵⁹ See *Congestion Charge*, Transport For London, <https://tfl.gov.uk/modes/driving/congestion-charge#:~:text=The%20Congestion%20Charge%20is%20a,by%20setting%20up%20Auto%20Pay>. (last visited Mar. 22, 2024).

⁶⁰ See *Downtown Congestion Pricing Study Case Study: London*, San Francisco County Transportation Authority (Feb. 2020), https://www.sfcta.org/sites/default/files/2020-02/Congestion-Pricing-Case-Studies_2020-02-13.pdf (last visited Mar. 22, 2024).

Following its establishment in 2007 after a seven-month trial period in 2006, the Stockholm congestion pricing program has produced impressive public health and environmental benefits. A researcher at Johns Hopkins University reported that the rate of asthma attacks among local children dropped by nearly 50% and air pollution levels dropped between five percent and 10% as a result of the congestion pricing program.⁶¹ During the trial period in 2006, the rate of asthma symptoms in children began to decline immediately and became even more pronounced a few years after the scheme became permanent. Additional benefits were felt immediately as congestion levels fell 20% to 25% during the seven-month trial period in 2006.⁶²

⁶¹ See Patrick Ercolano, *Study: Stockholm traffic tax helps kids in Sweden breathe easier Decreases in air pollution lead to dramatic drop in asthma attacks among young children*, John Hopkins University (Mar. 2, 2017), <https://hub.jhu.edu/2017/03/02/health-effects-for-children-sweden-traffic-tax/> (last visited Mar. 22, 2024).

⁶² *Id.*

CONCLUSION

For the reasons set forth above, *amici* respectfully urge the Court to grant Defendants' cross-motion for summary judgment.

Dated: April 1, 2024

Respectfully submitted,

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ Karen Steinberg Kennedy

Andrew D. Otis (admission pending)

Karen Steinberg Kennedy

Ryan Gander

1177 Avenue of the Americas

New York, New York 10036

Telephone: (212) 715-9100

Facsimile: (212) 715-8000

Email: aotis@kramerlevin.com

kkennedy@kramerlevin.com

rgander@kramerlevin.com

Charles S. Warren

MCLAUGHLIN & STERN LLP

260 Madison Avenue

New York, New York 10016

Telephone: (212) 418-1100

Email: CWarren@mclaughlinstern.com

Counsel for Amici curiae Environmental Defense Fund, New York League of Conservation Voters, Tri-State Transportation Campaign, Riders Alliance, Real Estate Board of New York, New York Lawyers for the Public Interest, WE ACT for Environmental Justice, StreetsPAC, and Transportation Alternatives